NO. 71-463

OCTOBER TERM, 1971

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JAN 29 1972
E. ROBERT SEAVER, CLERK

JOSEPH M. KADANS,
Appellant

v.

JON R. COLLINS, ET AL.,
as members of the
NEVADA SUPREME COURT,
Appellees.

PETITION FOR REHEARING

Submitted by
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-463

JOSEPH M. KADANS, Appellant

V.

JON R. COLLINS, ET AL., as members
of the
NEVADA SUPREME COURT,
Appellees.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS - NINTH CIRCUIT

PETITION FOR REHEARING

The petitioner herein respectfully moves this Court for an order (1) vacating its denial of certiorari, wherein the Court treated the appeal taken as a petition for writ of certiorari, entered on January 10, 1972, and (2) granting the petition. As grounds for this motion, petitioner states the following:

1. Intervening Circumstances of Substantial or Controlling Effect.

Since the decision of January 10, 1972, aforementioned Petitioner has obtained additional factual information of great importance to this case.

It will be recalled that the Motion to Dismiss Appeal for Want of Jurisdiction, filed on behalf of Respondents by Frederick Bernays Wiener, Esquire, contained the following statement on Page 9 of the Motion:

"No less than 17 states - Alaska, Arkansas, Idaho, Illinois, Indiana, Louisiana, Maine, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, South Dakota, West Virginia, and Wisconsin -- do not permit any alternative to their requirement of graduation from an A. B. A. -approved law school."

In the Brief Opposing Motion to Dismiss, Petitioner made it crystal clear that under the laws of the State of Alaska (Page 2 of Motion), an attorney-applicant seeking admission to the Alaska Bar need not be a graduate from an A. B. A. - approved law school if the attorney "has been engaged in the active practice of the law for at least 10 years." (Quotation from Alaska Statutes, Sec. 08. 08. 140, in regard to attorney applicants.)

The Brief also made it clear that Mr. Wiener erred with regard to Illinois (See Page 3 of the said Brief), who admit attorney-applicants with five years of practice, and with regard to Indiana (Page 3 of Brief), where the State Board of Bar Examiners may waive the ABA law school requirement, and with regard to Maine (Page 3 of Brief) where a three year practice requirement for attorney-applicants is in effect, and in regard to Nebraska (Page 3 of Brief), where a five year practice requirement is in effect for applicants such as the Petitioner herein, and in regard to New Hampshire (see Page 4 of Brief) where attorneys such as the Petitioner are admitted without any examination except as to moral character, and with regard to . : New Mexico (Page 4 of Brief), where the Petitioner herein would be allowed to be admitted on motion without any examination by reason of being "an attorney duly admitted to the bar in another state", and in North Dakota (Page 4 of Brief), where a five year requirement is in effect, which Petitioner herein could have easily met if Petitioner had applied for admission in that State, and with regard to South Dakota (Page 5 of Brief), wherein a similar 5-year requirement is in effect, and with regard to West Virginia (Page 5 of Brief), wherein a five year requirement is also

in effect and finally, with regard to the State of Wisconsin, where a five-year law practice requirement is also in effect, which Petitioner could easily have met, as Petitioner was first admitted to the practice of law in Maryland in 1943 and was actively engaged in the practice of law until he moved his residence to the State of Nevada in 1962, which has, since that year, prevented Petitioner from continuing to practice his profession.

Petitioner respectfully points to Pages 6 and 7 of his Brief Opposing Motion to Dismiss wherein Petitioner stated that he was in doubt with regard to the admission requirements of attorney-applicants in the States of Arkansas, Idaho, Louisiana, Minnesota and New Jersey.

There was no time, prior to preparing the Brief Opposing the Motion to Dismiss, to write to the aforementioned five States to ascertain their admission requirements for attorney-applicants as under the Supreme Court Rules (Rule 16 (3) and (4) the Motion to Dismiss filed by Mr. Wiener is required to be distributed to the Justices "upon the filing of such motion." Furthermore, distribution of the motion may not be delayed pending filing of a brief opposing the motion to dismiss.

It could not have reasonably been expected that Mr. Wiener would make such a statement in his Motion to Dismiss as is set forth at the top of Page 2 of this Petition, averring that 17 states, including Nevada "do not permit any alternative to their requirement of graduation from an A. B. A.-approved law school."

The statement of Mr. Wiener to the members of this Honorable Court, aforesaid, is difficult to understand. After all, of the 17 States named by him, the statutes on file in all good law libraries clearly show that he was in error with regard to eleven States, as listed in the foregoing parts of this Petition.

In addition, Petitioner has written to the Supreme Court Clerks of the States of Arkansas, Idaho, Louisiana, Minnesota and New Jersey to ascertain the rules of admission to the bars of these states with regard to attorney applicants, following the Brief Opposing Motion to Dismiss.

Replies from these States reveal that the State of Arkansas allows applicants such as the Petitioner herein to be admitted without any bar examination whatsoever where the attorney is found to be "of good moral character" and if he has "been admitted for at least four years to the Bar of the highest Appellate Court of another state where the requirements for admission to the Bar are substantially equivalent to the requirements of this state * * *." Petitioner, a member of the Bar of the States of Maryland and Michigan, meets these requirements.

The reply from Idaho indicates that under Rule 104 of the Rules of the Supreme Court and the Board of Commissioners of the Idaho State Bar, attorney applicants "admitted to practice before the highest court of another state *** and who has been actively engaged in the practice of law as his principal occupation in any such jurisdiction or jurisdictions for not less than 5 years within the last 7 years immediately preceding the filing of his application may apply for admission to the Idaho State Bar." There is no requirement, as to attorney applicants, for graduation from an ABA-approved law school.

The reply from Louisiana indicates that this State, similar to Nevada, has an over-broad requirement barring admissions to the bar examination of that State unless the attorney applicant is a graduate of a law school approved by the American Bar Association. There is no allowance for the number of years of practice, the existence of other and perhaps equally strict requirements for admission that applied to attorneys admitted many years ago or the high standing of the attorney applicant at the bar of the State of his former residence.

The reply from Minnesota indicates that under Rule XI of the Supreme Court Rules attorneys from other states (such as the Petitioner herein) "may be admitted to the practice of law upon motion without examination" upon evidence of practicing law for at least five years. There is no requirement for graduation from an A. B. A. -approved law school.

The State of New Jersey has a rule of the Board of Bar Examiners that "attorneys from other states must meet the standards of the rules to the same extent as all other applicants, including passing the examination." Thus, New Jersey is in the same class as Nevada and Louisiana in having in effect the same over-broad requirement that irrespective of the qualifications of the attorney applicant or of the number of years of practice or the standing of the attorney as a lawyer or as a jurist, he must nevertheless be a graduate of a law school approved by the American Bar Association.

The State of New Jersey does have a provision allowing attorney applicants who have taught at an approved law school to be admitted without any examination whatsoever. The Petitioner herein has taught at Loyola University School of Law at Los Angeles, teaching admiralty law, the petitioner herein having authored the text-book PRINCIPLES OF MARITIME LAW, approved and recommended as a student text-book by the Association of American Law Schools.

However, the State of Nevada, in the case at Bar, makes no provision for attorney applicants who have taught at an approved law school.

Thus, instead of 17 States, as Mr. Wiener claimed in his Motion to Dismiss, as aforementioned, there are only three States, Nevada included, that have the overbroad requirements preventing attorneys from moving to these states to take up residence and to practice their professions if these attorneys are of the class of attorneys who have graduated from a law school not approved by the American Bar Association or have studied law in a law office, as allowed in some

States and which was a customary practice for many years in many of the States.

2. Misapprehension of the Case.

In view of the fact that Mr. Wiener is a lawyer of many years standing, since 1931, and having authored the books "Effective Appellate Advocacy", "Briefing and Arguing Federal Appeals," and "Civilians Under Military Justice" and having been an assistant to the Solicitor General from 1945 to 1948, as well as the Reporter to the Committee of the Supreme Court of the United States on Revision of the Rules, it is inconceivable that such a learned student of the law, actually a jurist, could make such an erroneous statement to this Honorable Court (stating that there were 17 States who do not permit any alternative to their requirement of graduation from an A.B.A.-approved law school) as Mr. Wiener has long known that it is most reprehensible to make a misleading statement to any Court, and especially to such a body as the Supreme Court of the United States.

The only reasonable conclusion, therefore, is that Mr. Wiener has misapprehended the tenor of the case and that he has regarded Petitioner not as an attorney applicant but as a recent law school graduate who has never been admitted to the bar of any State. Only then could it be conceivable that an attorney with Mr. Wiener's standing and prestige would make such a statement to this Honorable Court.

It is therefore respectfully and most urgently suggested to this Honorable Court that Mr. Wiener, as counsel for Respondents, be asked to reply to this Motion for Rehearing so that he will be given an opportunity to restore his good standing before this Honorable Court and explain why he made the 17-state statement in his Motion to Dismiss.

It is also quite conceivable that because of Mr. Wiener's standing before the bar of this Honorable Court, prior to this case the brief he filed with his Motion to Dismiss may have been given more weight than if the Motion and brief had been filed by a lesser known advocate. Consequently, it is quite conceivable

that the Honorable members of this Court, severely pressed by a heavy docket, with the exception of Honorable Justices Douglas and Brennan, who voted to note jurisdiction and to grant the petition, also misapprehended the tenor of the case and considered this case to be just another one of the cases where a law student graduated from a non-ABA-approved law school and sought to take the state bar examination to be admitted to the practice of law.

This belief as to misapprehension by the Justices other than Justices Douglas and Brennan is fortified by the fact that the U.S. Court of Appeals for the Ninth Circuit affirmed the District Court as follows:

> "The case is affirmed on the authority of our Hackin v. Lockwood, 9 Cir., 361 F 2d 499."

It will be noted that in the Hackin Case, supra, Mr. Hackin attended a law school not approved by the State of Arizona whereas Petitioner attended and graduated from a law school approved by his State (Maryland); that Mr. Hackin, when he applied to take the Arizona bar examination, had never been admitted to the bar of any other State, whereas Petitioner had been formally admitted to the bars of Maryland, Michigan, the United States Supreme Court and several U.S. Courts of Appeals at the time he applied for permission to take the Nevada State Bar Examination. Thus, there are great and important distinctions between the Hackin Case, supra and the case at bar.

Just as in Reid v. Covert, 352 U.S. 901, 354 U.S. 1, where the Supreme Court of the United States granted rehearing where the Court apparently had substantial doubt as to the correctness of its prior decision, so would it likewise appear that in the case at bar a grievous injustice with irreparable injury to an outstanding lawyer, law writer and law professor is being done and can only be repaired upon granting of this Petition for Rehearing or at least requesting Mr. Wiener to answer this Petition.

The Ninth Circuit misapprehended the tenor of this case, depriving Petitioner of his right to take the Nevada bar examination and to continue to practice his profession just as the District Court Judge Roger Foley misapprehended the tenor of this case, relying upon the same Ninth Circuit Case of Hackin v. Lockwood, supra, a wholly inapplicable case.

Finally, it is pointed out, respectfully, to this Honorable Court, that throughout the Motion to Dismiss, filed by Mr. Wiener, his argument ran solely to his 17-state statement as aforesaid. On Page 8, in the first portion of his argument, he indicated reliance on the Hackin Case and quoted from the decision of that case that the various states may require what they wish before allowing the taking of bar examinations. In the Hackin Case, because Hackin was not an attorney applicant, the U.S. Supreme Court denied review (385 U.S. 960), whereas the case at bar is entirely different in many important aspects.

CONCLUSION

For the reasons set forth above, as well as those contained in the Jurisdictional Statement and in the Brief Opposing Motion to Dismiss, Petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

_____
Petitioner - In pro per

CERTIFICATE OF COUNSEL

As Petitioner in proper person and as a member of the Bar of the Supreme Court of the United States, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

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Counsel and Petitioner